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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/625,188	07/23/2003	John E. Thomas	10009.1764US01	1262
43896	7590	10/11/2006	EXAMINER	
ECOLAB INC. MAIL STOP ESC-F7, 655 LONE OAK DRIVE EAGAN, MN 55121			CHORBAJI, MONZER R	
			ART UNIT	PAPER NUMBER

1744

DATE MAILED: 10/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/625,188

**Applicant(s)**

THOMAS ET AL.

**Examiner**

MONZER R. CHORBAJI

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 June 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
- Paper No(s)/Mail Date 10/27/03.

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

### DETAILED ACTION

**This general action is in response to the application filing date of 07/23/2003**

#### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-5, 10-15 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Copland et al (U.S.P.N. 5,505,915).

Regarding claim 1, Copland a product dispenser (figure 2:2) that includes the following: a product dispenser (figure 2:10), a product mix tank (figure 2:83), a dispenser conduit (figure 2:50 and 22) from the product dispenser (figure 2:10) into the product mix tank (figure 2:83) and a pump (figure 2:51).

Regarding claims 2-5, 10-14 and 17, Copland discloses the following: a housing (figure 3:12) that is capable of withstanding up to about 30 psi of water pressure, housing has a top, a bottom and side walls (unlabeled sides of housing 12 in figure 3), water inlet (figure 3:22), an outlet (figure 3:25), support member positioned within the housing (figure 3:19), product spray nozzles located within the housing (figure 3:21), spray nozzles positioned below the support member (figure 3:21 and 13), one piece of solid (figure 3:13), product mix tank (figure 10:16) includes circulation nozzle (figure 3:21), a microprocessor (figure 2:50), caustic cleaning solid (col.5, lines 35-38), product dispenser has a first cross-sectional configuration (unlabeled cross section of housing

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12 in figure 3) in combination with solid having cross-sectional configuration (unlabeled cross section of solid 13 in figure 3) similar to the first cross-sectional configuration, positioning the system relative to a water source (col.4, lines 65-67 and col.5, lines 1-4), placing solid pieces in the product dispenser (figure 3:13) and providing water into the product dispenser such that water comes into contact with the solid (figure 3:21 and 13) to form a liquid use solution.

Regarding claim 15, combining the product dispensing system with a rotary fryer cooking system is considered intended use that does not further limit the scope of this claim. See MPEP 2114.

3. Claims 18-19 and 22-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Levesque et al (U.S.P.N. 5,928,608).

Regarding claim 18, Levesque discloses a method of making a liquid use solution (col.4, lines 46-65) that includes the following: positioning a product dispensing system relative to a water source (figure 5:70), placing solid pieces in the product dispenser of the product dispensing system (figure 5:68), filling the product mix tank with a desired amount of water (figure 5:74 and 80) and pumping water from the product mix tank (unlabeled lower portion of 56 and 78 in figure 5) into the product dispenser (figure 5:70) for contacting water with the solids (figure 5:72) such that the liquid use solution drains from the product dispenser (upon spraying the solid pieces 68 in figure 5 with water from nozzles 72, the liquid use solution drains down into the tank) into the product mix tank.

Regarding claims 19 and 22-27, Levesque teaches the following: product dispenser (figure 5:54), product mix tank (unlabeled lower portion of 56 in figure 5), dispenser conduit from the product dispenser into the product mix tank (unlabeled conduit part of 58 between 66 and lower portion of 56 in figure 5), a pump (figure 2:4), controlling the fluid level within the product mix tank with one or more fluid level indicators (figure 5:74 and 80), monitoring fluid property within the product mix tank with a monitor that is an inductive probe (col.4, lines 15-28) through the use of a microprocessor, spraying water onto the solid product via one or more product spray nozzles (figure 5:72) and distributing the liquid use solution into a receiving reservoir (col.1, lines 6-10).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 6-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Copland et al (U.S.P.N. 5,505,915) as applied to claim 1 and further in view of Hennemann et al (U.S.P.N. 6,098,646).

Regarding claims 6-9, Copland discloses a product mix tank that includes the following: a drain outlet, an overflow outlet and a pump outlet. Copland fails to teach that the product mix tank includes the following: water inlet, fluid level indicator fill nozzle positioned within the an upper portion of the product mix tank, the use of a low and high fluid level indicators and the use of an inductive probe. Hennemann teaches that the product mix tank includes the following: water inlet (unlabeled inlet of 34 into 26 in figure 1), fill nozzle positioned within the an upper portion of the product mix tank (unlabeled opening of 24 into 26 in figure 1), the use of a low and high fluid level indicators (col.5, lines 50-54) and the use of an inductive probe (figure 1:16 and 18). Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to further modify Copland dispenser by adding level indicators as

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taught by Hennemann so that the appropriate level of liquid is continuously maintained (Hennemann, col.5, lines 50-56).

8. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Copland et al (U.S.P.N. 5,505,915) as applied to claim 1 and further in view of Canther (U.S.P.N. 5,498,333).

Copland fails to teach including plastic material as part of the product dispenser. Canther teaches including plastic transparent material as part of a chemical dispenser (col.3, lines 59-65). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to further modify Copland product dispenser by including plastic material as taught by Canther so that a person can inspect the interior structure of the dispenser without opening the cover all the time (Canther, col.3, lines 59-65).

9. Claims 20-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Levesque et al (U.S.P.N. 5,928,608) as applied to claim 18 and further in view of Lucas (U.S.P.N. 3,638,633).

Regarding claims 20-21, Levesque fails to teach spraying water within the mix tank and circulating the fluid within the mix tank by using a pump, a circulation valve and circulation nozzles. Lucas teaches spraying water within the mix tank (figure 3:24) and circulating the fluid within the mix tank by using a pump (col.3, lines 5-15), a circulation valve (col.5, lines 40-45) and circulation nozzles (figure 2:18, 19, 42 and 4). Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to further modify Levesque method by including a spraying water step within the

mix tank as taught by Lucas to further insure that any pieces of solids dropped into the mixing tank is dissolved.


***Conclusion***

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MONZER R. CHORBAJI whose telephone number is (571) 272-1271. The examiner can normally be reached on M-F 9:00-5:30.

11. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, GLADYS J. CORCORAN can be reached on (571) 272-1214. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

12. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

*MRC*

  
GLADYS JP CORCORAN  
SUPERVISORY PATENT EXAMINER